IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
	)
Patrick R. LANCASTER, III et al.	) Group Art Unit: 3651
	)
Application No.: 10/696,736	) Examiner: Prakasam, Ramya G.
	)
Filed: October 30, 2003	)
	)
For: METHOD AND SYSTEM FOR	) Confirmation No.: 6347
BUILDING A LOAD	)

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

<u>**REPLY BRIEF UNDER 37 C.F.R. § 41.41**</u>

Pursuant to 37 C.F.R. § 41.41, Appellant presents this Reply Brief in response to the Examiner's Answer mailed November 17, 2008.

I.   <u>REMARKS</u>

In addition to the arguments for reversal of the outstanding rejections provided in Appellant's Appeal Brief filed on August 18, 2008, Appellant provides the following remarks regarding the Examiner's Answer.

The Examiner's Answer includes new assertions with respect to the rejection of claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,098,254 to Becicka et al. ("<u>Becicka</u>"); and the rejection of claims 32, 45, 51-53, 66, 72-74, 174-180, 182-187, 189-194, 196-199, and 201 under 35 U.S.C. § 103(a) as being unpatentable over <u>Becicka</u>.

A. **The Rejection is Based on a Mischaracterization of Becicka**

The Examiner's response to Appellant's arguments from the Appeal Brief of

August 18, 2008 is provided in the section titled "Response to Arguments" on pages 5

and 6 of the Examiner's Answer. The Examiner's response not only fails to rebut

Appellant's arguments, but also shows that the Examiner's rejection is based on

mischaracterizations of Becicka.

Page 5 of the Examiner's Answer asserts that

> [w]ith regards to applicant's argument . . . Becicka discloses the use of
> switches and detectors (62, 56/58, and 64) to determine the operational
> data of the pallet, <u>including whether the pallet is fully loaded</u> (See Column
> 4, lines 20-50). In particular, an area to be filled is defined as the
> predetermined fill point, and when it is loaded to its predetermined size
> (and area), it is determined that the pallet is fully loaded.

(emphasis added). Becicka, however, discloses nothing of the sort. Rather, in the cited

passage, Becicka discloses that

> [w]ithin the control panel 50, the control circuitry operates to control the
> palletizer 10 in accordance with: (a) various user-generated
> predetermined control inputs, (b) by the inputs, or control signals, provided
> by the above discussed photodetectors 56, 58 and the proximity detectors
> 62, 64 and (c) by the various limit switches 32, 42. Preferably, the control
> system comprises a programmed commercially available, microprocessor-
> based circuit . . . . Programming of the control system involves entering
> various <u>predetermined operational data</u>, such as the number of the
> cartons 12 per row; the orientation of each of the cartons 12 within the
> row, spacing (per user requirements) between the adjacent cartons 12
> within the row and the <u>total number of the cartons 12 for a fully loaded
> form of the pallet 14</u> . . . . Control of the robotic palletizer 10 is thus
> effectuated in accordance with execution of the computer program
> instructions which utilize the predetermined operational data input by the
> user and the control signal information as the variable parameters.

Becicka, column 4, lines 20-47 (emphasis added). Thus, contrary to the assertions of

page 5 of the Examiner's Answer, switches and detectors 32, 42, 56, 58, 62, and 64 do

not determine when pallet 14 is fully loaded. That information is predetermined

operational data programmed into the control system, as explained in the passage

above. Instead, switches and detectors 32, 42, 56, 58, 62, and 64 may be used to

assist with filling an area with cartons 12. *Id.* Thus, the Examiner has mischaracterized

Becicka. Since the Examiner has mischaracterized Becicka, and relied on the

mischaracterization to make the rejection, the rejection is improper.

Page 5 of the Examiner's Answer also asserts the following with respect to

Becicka:

> the area to be filled i[s] defined by not only predetermined characteristics,
> but also by the location of cartons already on the pallet (See Abstract).
> Therefore, the area to be filled is in fact defined by the use of height,
> length and width sensors 62, 56/58 and 64.

The Abstract in Becicka, however, does not support the above assertion. Rather, the

Abstract states that

> [a] pair of photodetectors, movable with the hand assembly, sense the
> presence and location of cartons in place on a pallet being loaded and
> signal the palletizer when the vertical height and horizontal extension of
> the hand assembly are sufficient to place cartons in the proper position for
> loading onto the pallet.

The Abstract discloses how detectors 62 and 64 may be used to assist with filling

pallet 14 with cartons 12 (see Becicka, column 4, lines 1-19, for example)--it does not

disclose that detectors 62 and 64 define an area to be filled with cartons 12, as asserted

by page 5 of the Examiner's Answer. Thus, the Examiner has mischaracterized

Becicka. Since the Examiner has mischaracterized Becicka, and relied on the

mischaracterization to make the rejection, the rejection is improper.

Further, page 5 of the Examiner's Answer also asserts the following with respect

to Becicka:

> [c]olumn 4, lines 20-50 clearly state[s] that the photodetectors and
> switches will determine when the pallet is fully loaded based on cartons
> that are currently on the pallet.

This assertion is baseless, and is not supported by the cited passage from Becicka

(reproduced above). Switches and detectors 32, 42, 56, 58, 62, and 64 do not

determine when pallet 14 is fully loaded based on cartons 12 currently on pallet 14, or

on any other basis. That information is predetermined operational data programmed

into the control system. *See* Becicka, column 4, lines 20-47. Thus, the Examiner has

mischaracterized Becicka. Since the Examiner has mischaracterized Becicka, and

relied on the mischaracterization to make the rejection, the rejection is improper.

Page 6 of the Examiner's Answer asserts that

> With regards to applicant's argument that Becicka fails to disclose the
> automatic repeating of the moving and depositing steps by repeating a
> single logic sequence for at least two consecutive moving and depositing
> steps, Column 4 provides for the repeating for moving and depositing
> steps for filling a partially loaded pallet (See Column 4, lines 51-62).

However, contrary to this assertion, while Becicka describes steps performed for

moving and deposition cartons 12 in column 4, lines 51-62, Becicka does not specify

whether a single logic sequence is repeated for at least two consecutive moving and

depositing steps. Becicka is, at best, silent as to this feature. But silence is not

disclosure, and thus the Examiner's reliance on silence as disclosure of a claim element

in the rejections is improper.

Page 6 of the Examiner's Answer also asserts that "a controller being used to

accommodate for different size items is obvious because the fully loaded status of the

pallet is determined by the sensors." As already explained above, the fully loaded

status of pallet 14 of Becicka is predetermined operational data programmed into the

control system, and is not determined by switches and detectors 32, 42, 56, 58, 62, and 64. Thus, the Examiner has mischaracterized <u>Becicka</u>. Since the Examiner has mischaracterized <u>Becicka</u>, and relied on the mischaracterization to make the rejection, the rejection is improper.

When properly read and interpreted, <u>Becicka</u> fails to teach or even suggest the claimed features. Accordingly, Appellant respectfully requests that the rejection of the claims be withdrawn.

II. **CONCLUSION**

For at least the reasons given above, and those reasons provided in Appellant's Appeal Brief, Appellant respectfully submits that the rejection of claims 24-32, 38, 43-54, 62, 65-74, 83, 86, 173-180, 182-187, 189-194, 196-199, and 201 are in error and should be reversed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Reply Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: January 16, 2009

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